Index

Aboriginal law, rights and justice

constitutional recognition of Aboriginal and Torres Strait Island people Joint Committee report on Bill (Cth), 71 South Australia, 142 sentencing & Aboriginality, 313

Administrative review

Anti-Doping Rule Violation Panel, 318 justices of the peace in QCAT, 230

Asylum seekers - see Migration law

Bias, apprehended

ICAC (NSW), 229 template paragraphs in multiple opinions, 77

Bill of rights

United Kingdom, 146

Book reviews

Ackermann, Laurie: Human Dignity: Lodestar for Equality in South Africa, 305-312 Morris, Caroline: Parliamentary Elections, Representation and the Law, 67-70

Child sexual abuse

Royal Commission, 81-86 judges, inquiries & separation of powers, 81-85

Citizen-initiated referenda

dangerous democracy or dangerous judiciary (California)
benefits of direct democracy, 249-250
constitutional debasement, 245-246
government unable to govern, 248-249
unrepresentative rule, 247-248

Common law

rights

compelling consent to giving bodily sample (WA), 316 examinations under Criminal Assets Recovery Act (NSW), 316

Confidential information

barrier to accessing environmental information under FOI, 12

Constitution (California)

citizen-initiated referenda, 245-246

Constitution (Cth)

Aboriginal and Torres Strait Islander people recognition Joint Committee report on Bill, 71 discovery of confidential newspaper sources, 228 freedom of trade (s 92) Cole v Whitfield, 97-107 Betfair (No 1), 99-102 Betfair (No 2) and Sportsbet, 102-103 implications, 105-107 freedom of political communication "offensive" use of postal services, 143 restrictions on preaching (SA), 143 House of Representatives control over Money Bills constitutional history, 161-163 constitutional provisions, 161 local government recognition, 142 referendum not proceeded with, 225 separation of powers, 81-85 validity of vehicle forfeiture laws (SA), 315

Constitution (Papua New Guinea)

Parliamentary test of supremacy, 92-96 Allan Marat case, 95-96 East Sepik case, 93-94 principles under contention, 92-93 way forward, 96

Constitution (Singapore)

standing to challenge (Tan Eng Hong), 87-91 comparative connections, 90 personal wrong as necessary requirement, 87-88 violation of rights, 88-90

Constitution (South Australia)

recognition of Indigenous peoples, 142

Control orders, 182-208

Australian regime, 188-190
future of, 206-208
use of, 191-194
origins of control order regimes, 183-188
United Kingdom regime
compared with Australian regime, 194-200
reforms: TPIMs, 200-203
Australian control orders compared, 203-206

Corporations law

insider trading legislation (Cth) relevance of international law, 72 jurisdiction of State courts, 228

Corruption

lawfulness of ICAC decision on "corrupt conduct" (NSW), 229

legislation to set up watchdog (SA), 73

Courts – see Federal Circuit Court of Australia; High Court; Jurisdiction; State courts

Criminal law

mandatory minimum sentences & Kable doctrine (NSW), 143

requirement of clear legislative intention for retrospective legal duties to allow for criminal liability to attach to failure to act at time when no such legal duty existed, 142

Criminal organisations

scope of Commonwealth power

Queensland law & institutional integrity of
Supreme Court, 142-143

Democracy

direct - see Citizen-initiated referenda

Diplomacy

High Court judges, 136-138

Discrimination

sex discrimination legislation, 228

Elections

book review, 67-70 proportional representation (NZ) Electoral Commission report, 71

Environmental information – see **Freedom of information**

Examinations

Criminal Assets Recovery Act (NSW), 316

processing plant (SA), 317

Executive power

freedom of information documents held by ministerial advisers (Vic), 147 ministerial approval for expansion of mine & ministerial discretion to grant Temporary Safe Haven visas, 226 ministerial oath or affirmation of allegiance, 314 ministerial power to intervene in granting visas, 75

Extradition

authority of Federal Circuit Court, 228

Federal Circuit Court of Australia

authority in extradition proceedings, 228 complaints handling, 144 establishment, 73

Federal distribution of power

inconsistency

Queensland regulations & federal law possession of alcohol, 225 scope of Commonwealth power criminal organisation laws & institutional integrity of Supreme Court (Qld), 142-143 freedom of political communication "offensive" use of postal services, 143 restrictions on preaching (SA), 143 mandatory minimum sentences & Kable doctrine (NSW), 143

Federal magistrates

renamed as judges, 73

Freedom of information

barriers to accessing environmental information, 10-16
confidential information, 12
intellectual property, 10-12
public interest test, 13-14
recommendations, 15-16
UK law, 14-15
documents held by ministerial advisers (Vic), 147
Motor Accident Commission (SA) as "exempt agency", 318

Freedom of political communication,

"offensive" use of postal services, 143 restrictions on preaching (SA), 143

Freedom of trade

interstate - see Constitution (Cth)

Gay marriage - see Marriage

Governor-general Indigenous people advice from Solicitor-General on Rudd's Australia – see Aboriginal law, rights and justice appointment as Prime Minister, 289-304 Individual rights - see Human rights correspondence, 289-291 **Intellectual property** commentary on letters, 291-303 barrier to accessing environmental information under FOI, 10-12 Habeas corpus procedure & constitution (NZ), 166-181 Judges - see also Judicial officers hermeneutics, 175-180 corpus, 175-176 Appointment – see Judicial appointments detention, 176-178 Apprehension of bias - see Bias legality, 178-179 Extra-judicial activity - see also **High Court** release, 179-180 inquiries & separation of powers, 81-85 inherent jurisdiction, 170-72 State judges on federal commissions, 85-86 judicial review, 172-175 Federal Circuit Court of Australia, 73 jurisdictional conflict, 167-168 federal magistrates renamed as, 73 proceduralisation & democracy, 168-170 High Court - see High Court inquiries & separation of powers, 81-85 **High Court** template paragraphs in multiple opinions & judges apprehended bias, 77 extra-judicial activity (1903-1945), 125-141 Judicial activism "anomalous occurrences in unusual circumstances", 138-141 Australian discourse, 17-36 diplomatic work, 136-138 academic climate, 34-36 existing accounts, 126-128 "converging factors" (Schlesinger), 18-20 National Debt Commission, 135-136 in Australia, 20-24 Royal Commissions & executive inquiries, legalism, 24-28 129-135 Dixon, 28-34 State courts and Judicial appointments High Court as ultimate appellate court, 263judicial diversity, 233-238 264 Australia, 233-234 **Human rights** United Kingdom, 234-238 Bill of Rights (UK), 146 amendments to appointment process, 237control orders - see Control orders human dignity implications for Australia, 238 South Africa (book review), 305-312 part-time work, 236-237 infringement offences legislation (Vic), 145 positive action, 235-236 principle of legality & self-incrimination, 229 reserve judicial officers (Vic) refugees in detention eligibility for appointment, 144 access to security assessments, 146 Judicial officers - see also Judges same-sex marriage - see Marriage appointment - see **Judicial appointments** sex discrimination legislation, 228 complaints procedure (Cth), 73 UN Human Rights Committee criticism of decisions outside judicial function amenable to Australia's indefinite detention policy, 316 judicial review, 315 standard procedure for consideration of, 73

(2013) 24 PLR 335 337

Immigration - see Migration law

Judicial power principles for identifying, 43-47 Plaintiff M70, 49-54 committing magistrates ordering dismissal or stay implications for review, 54-65 of criminal proceedings (Vic), 144 State courts under corporations legislation, 228 Industrial Relations Commission (NSW), 74 orders detaining Kable valid, precluding relief for false imprisonment, 227 private arbitrations and Kable doctrine, 144 Local government prosecutorial discretion constitutional recognition, 142 choosing between simple & aggravated referendum not proceeded with, 225 offences, 314 corporate status & autonomy (Qld), 148 waiving mandatory costs orders, 227 local law & planning scheme operate together to regulate land use (Vic), 230 Judicial review - see also Jurisdiction apprehension of bias ICAC (NSW), 229 Magistrates – see also Judicial officers coroner's choice to refer to DPP (Qld), 75 committing magistrates ordering dismissal or stay decisions made under an enactment (Tas), 317 of criminal proceedings (Vic), 144 decisions outside judicial function amenable to federal, renamed as judges, 73 judicial review, 315 habeas corpus (NZ), 172-175 Marriage as alternative, 74-75 same-sex (ACT) Migration Act and Refugees Convention, 146 legislation & Commonwealth challenge, 315 private incorporated bodies (NZ), 108-124 same-sex (NSW) common law review & statutory review, 113power of State Parliaments, 226 123 same-sex (NZ), 145, 151-154 Judicature Amendment Act 1972, 110-113 adoption by same-sex parents, 153-154 protection obligations before removal of unlawful legislating for equality, 151-152 non-citizens, 146-147 protecting rights of religious celebrants, 152public consultation process, 209-224 Australian courts, 212-222 Migration law problems avoided & benefits missed, 222-224 requirements & administration, 210-212 asylum seekers Treaty of Waitangi (NZ) ministerial discretion to grant Temporary Safe privatisation of State-owned hydroelectric Haven visas, 226 company, 147 public interest criterion for granting protection visas (Plaintiff M47), 3-9 Wednesbury unreasonableness & Migration Review Tribunal, 147 Al-Kateb, 7-9 wrongful imprisonment in place not prescribed by legislative framework, 4 order, 146 minority judgments, 6-7 reasons for decision, 5-6 Judiciary - see Judges hearing procedures (Plaintiff M47), 3-9 Jurisdiction hearings, 157-158 inconsistency between NSW laws, 145 possible exclusion of natural justice, 158-160 jurisdictional error variable nature of fairness, 155-160 failure to provide reasons, 77 Migration Act (Cth) functus officio doctrine, 74 EU not a "country", 225 jurisdictional facts, 37-66 Migration Review Tribunal definition in Australia, 38-48 Wednesbury unreasonableness, 147 avenues of judicial review, 41-43 ministerial power to intervene in granting visas, 75 categories, 38-41 protection obligations before removal of unlawful Chevron doctrine, 47-48 non-citizens, 146-147

UN Human Rights Committee criticism of Australia's indefinite detention policy, 316

Mineral resources

ministerial approval for expansion of mine & processing plant (SA), 317

Ministers - see Executive power

Natural justice - see Procedural fairness

New Zealand

judicial review – *see* **Judicial review** same-sex marriage – *see* **Marriage** voting system – *see* **Elections**

Papua New Guinea

Parliamentary test of supremacy, 92-96 Allan Marat case, 95-96 East Sepik case, 93-94 principles under contention, 92-93 way forward, 96

Parliament

extent of State liability for MPs (NSW), 71
minority government (Gillard/Rudd)
House of Representatives control over Money
Bills, 161-165
constitutional history, 161-163
constitutional provisions, 161
laws appropriating revenue or moneys, 163165
standing orders, 163
power of State Parliaments
same-sex marriage (NSW), 226
voting systems – see Elections

Parliamentary Budget Office, 267-288

Australian PBO, 273-278
challenges & opportunities for, 286-288
comparison with other IFIs, 278-286
independent fiscal institutions (IFIs) & the budget
process, 268-273

Precedent

State court decisions interpreting Uniform Evidence Law, 227

Procedural fairness

alteration of liquor licensing laws, 76-77
hearing procedures (Plaintiff M47), 3-9
hearings, 157-158
possible exclusion of natural justice, 158-160
variable nature of fairness, 155-160
Kable principle and (Condon v Pompano), 239-244
legitimate expectations, 76
ministerial power to intervene in granting visas, 75
prosecutorial discretion, 75-76
template paragraphs in multiple opinions &
apprehended bias, 77
unrepresented persons in AAT hearings, 76

${\bf Proportional\ representation} - {\it see}\ {\bf Elections}$

Public interest

barrier to accessing environmental information under FOI, 13-14 criterion for granting protection visas (Plaintiff M47), 3-9 Al-Kateb, 7-9 legislative framework, 4 minority judgments, 6-7 reasons for decision, 5-6

Religion

same-sex marriage protecting rights of religious celebrants (NZ), 152-153

Remedies

certiorari for inadequate reasons, 78 clean hands as discretionary factor in denying, 317-318

Royal Commissions

Royal Commission into Institutional Responses to Child Sexual Abuse, 81-86 judges, inquiries & separation of powers, 81-85 – see also **High Court**State judges on federal commissions, 85-86

Same-sex marriage - see Marriage

Sentencing

mandatory minimum sentences & Kable doctrine (NSW), 143

(2013) 24 PLR 335 339

Singapore

anti-sodomy laws
standing to challenge (Tan Eng Hong), 87-91
comparative connections, 90
personal wrong as necessary requirement,
87-88
violation of rights, 88-90

South Africa

human dignity (book review), 305-312

State courts

decisions interpreting Uniform Evidence Law, 227 jurisdiction under corporations legislation, 228 nationalisation, 252-266 divergence & convergence, 252-253 freestanding principles & "top-down reasoning", 260-261 High Court as ultimate appellate court, 263-264 integrated Australian judicial system, 261-262 as a principle, 264-265 judicial review, 253-260 City of Enfield, 256-257 Kable, 254-256 Plaintiff S157 and Kirk, 253-254 Pompano, 259-260

State Parliaments

extraterritorial operation of State laws (WA), 313

Statutory interpretation

Wainohu, 257-259 single common law, 262-263

consistency & ambiguity, 313
definitions of terms in another statute (NSW), 72
insider trading legislation (Cth)
relevance of international law, 72
Migration Act (Cth)
EU not a "country", 225
requirement of clear legislative intention for
retrospective legal duties to allow for criminal
liability to attach to failure to act at time when
no such legal duty existed, 142

Taxation

Minerals Resource Rent Tax, 316-317

Terrorism

control orders - see Control orders

Torts

extent of State liability for MPs (NSW), 71

Tribunals

unrepresented persons in AAT hearings, 76

United Kingdom

barriers to accessing environmental information under FOI, 14-15
Bill of Rights, 146
control orders
Australian & UK control orders compared, 194-200
reforms: TPIMs, 200-203
Australian control orders compared, 203-206

Whistleblowers

legislation (Cth), 226 protection (Vic), 73